IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 16.10.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Habeas Corpus Petition No.822 of 2006

Manjula ... Petitioner

Vs.

1.The State of Tamil Nadu, rep. by its
Secretary to Government,
Prohibition and Excise Department,
Fort St. George, Chennai-600 009.

2.The District Magistrate and
District Collector,
Kancheepuram District,
Kancheepuram. .. Respondents

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 06.08.2006 in BDFGISSV No.45/2006 against the petitioner's husband Krishnan, male, aged 29, son of Ellapillai, who is confined at Central Prison, Vellore, set aside the same and direct the respondents to produce him before this Court and set him at liberty.

For Petitioner : Mr.O.S.Tilak Pasumpadiyar for Mr.J.Ganesh
For Respondents: Mr.M.Babu Muthu Meeran
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.SATHASIVAM,J.)

The petitioner, who is the wife of the detenu, by name Krishnan, who is detained as a "Bootlegger" as contemplated under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), by the impugned detention order dated 06.08.2006, challenges the same in this Petition.

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2. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondents.

3. At the foremost, learned counsel for the petitioner, after taking us through the averments in para 5(i) of the grounds of detention, has submitted that the ultimate detention order has to be interfered with on the ground of non application of mind on the part of the detaining authority. While elaborating the above submission, the learned counsel appearing for the petitioner has brought to our notice that though the detaining authority has noted that the detenu viz., Krishnan has filed a bail application before the Court of Principal District and Sessions Judge, Chengalpattu, in Crl.M.P.No.8466/2006 and the same was withdrawn by the accused on 24.07.2006 and again he filed a bail application before the High Court, Chennai in Crl.O.P.No.19577/2006 and the same was posted for hearing on 07.08.2006 and the same is pending, he has arrived at a conclusion mechanically that "... however it is most likely that he may come out on bail by filing a bail application before the same or higher Court ...". As rightly pointed out by the learned counsel for the petitioner, the detaining authority, having found that the bail application filed by the detenu is pending before the High Court, Chennai in Crl.O.P.No.19577 of 2006, has arrived at a conclusion that it would be possible for the detenu to come out on bail by filing bail application before the concerned Court or higher Courts, which amply shows his non application of mind in arriving imminent possibility of the detenu being coming out on bail. It is not in dispute that when the bail application filed earlier is still pending, unless the said petition is dismissed, the detenu cannot move another bail application. We are satisfied that the conclusion arrived at by the detaining authority cannot be sustained and the detention order is liable to be quashed on the ground of non application of mind and accordingly, the same is quashed.

4. Accordingly, the Habeas Corpus Petition is allowed and the impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith from the custody unless he is required in some other case or cause.

Sd/
Asst.Registrar

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/true copy/

Sub Asst.Registrar

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To

1.The District Magistrate and
District Collector,
Kancheepuram District,
Kancheepuram.

2.The Secretary to Government,
Government of Tamil Nadu,
Prohibition and Excise Department,
Fort St. George, Chennai-600 009.

3. The Superintendent,
Central Prison, Vellore.
(In duplicate for communication to detenu)

4. The Joint Secretary to Government,
Public (Law and Order)
Fort St. George, Chennai-9.

5. The Public Prosecutor,
High Court, Madras.

1 cc To Mr.J.Ganesh, Advocate, SR.48158.

HCP. No.822 of 2006

TEJ(CO)
RVL 31.10.2006

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